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Ref.: Part 2 of the Constitution Review / Proposal for Enhanced Public Accountability

Dear Ms Oyre,

The International Swaps and Derivatives Association (“ISDA”) is pleased to provide the following comments with respect to the referenced Discussion Paper (DP) ‘Part 2 of the Constitution Review / Proposal for Enhanced Public Accountability’, to the IASC Foundation at the request of the Trustees’ meeting in October 2008 in Beijing and in line with the specific calendar included in the Constitution that states that a review must be completed every five years.

ISDA has over 800 member institutions from 56 countries on six continents. These members include most of the world’s major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities. As such, we believe that ISDA brings a unique and broad perspective to the work of the IASB.

In this letter we outline our key messages in response to the above referenced discussion paper and in the appendix we provide our more detailed responses to the questions included in the consultation.

Key messages:

- We are broadly supportive of the changes proposed in Part 2 of the Constitution Review as we believe the changes will enhance the organisation’s governance structure, thereby ensuring public confidence in the international standard setting process.

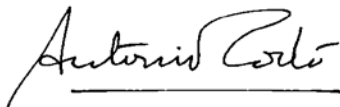
- We retain the belief, as expressed in our comment letter to Part 1 of the Constitution Review, that the fundamental objective of the IASC Foundation and the IASB is to bring about convergence of national accounting standards to one common set of high quality global international reporting standards based on principles. As such we would recommend that the objectives of the IFRS Foundation have specific reference to the development of principles based standards.
- The ED affirms that many commentators have repeatedly raised the capacity and effectiveness of the SAC to accomplish its objectives. We share this view and therefore encourage the Trustees to monitor the SAC on areas of operability for example. To improve the effectiveness of the SAC perhaps the Trustees could consider splitting the SAC into smaller groups and soliciting their advice on that basis.

In setting out our comments below we have followed the structure and references set out in the consultation paper. We hope you find ISDA's comments informative and beneficial. Should you have any questions or desire any clarification concerning the matters addressed in this letter please do not hesitate to contact the undersigned.

Yours faithfully,



Charlotte Jones
Deutsche Bank AG
Chair, European Accounting Policy Committee



Antonio Corbi
International Swap and Derivatives Association
Risk and Reporting

Attachment:
Appendix: Responses to the questions

Appendix: Responses to the questions

I) Confusion associated with the existing names within the IASC Foundation (section 1)

Q 1. The Trustees seek views on the proposal to change the name of the organization to the ‘International Financial Reporting Standards Foundation’, which will be abbreviated to ‘IFRS Foundation’.

The Trustees also seek views on the proposal to mirror this change by renaming the International Accounting Standards Board (IASB) as the International Financial Reporting Standards Board, which will be abbreviated to ‘IFRS Board’.

Do you support this change in name? Is there any reason why this change of name might be inappropriate?

Yes, ISDA members support the changes in the names of the two entities. The proposed names are more representative of the responsibilities of both bodies.

Q 2, The Trustees seek views on the proposal to replace all references to ‘accounting standards’ with ‘financial reporting standards’ throughout the Constitution. This would accord with the name change of the Foundation, the Board and the formal standards developed by the IASB—International Financial Reporting Standards (IFRSs).

Do you support this change?

Yes, ISDA members support the proposed change. The term ‘financial reporting standards’ represents an enhancement to the ‘accounting standards’ term. Further, we believe that to align the term throughout all sections of the present Constitution will enhance its understanding and facilitate its interpretation.

II) The need to clarify the objectives of the organisation in the light of global IFRS adoption (section 2)

Q 3, The Trustees seek views on their proposal to change section 2 as follows:

The objectives of the ~~IASC~~ IFRS Foundation are:

(a) to develop, in the public interest, a single set of high quality, understandable, ~~and~~ enforceable and globally accepted accounting financial reporting standards that require high quality, transparent and comparable information in financial statements and other financial reporting to help participants in the world’s capital markets and other users make economic decisions;

(b) to promote the use and rigorous application of those standards;

(c) in fulfilling the objectives associated with (a) and (b), to take account of emerging economies and, as appropriate, the special needs of small and medium-sized entities ~~and emerging economies~~; and

(d) to bring about convergence of national accounting standards and ~~International Accounting Standards and~~ International Financial Reporting Standards (IFRSs, being the standards and interpretations issued by the IFRS Board) to high quality solutions.

Do you support the changes aimed at clarity?

In regards to item a, the changes provide clarity by stressing that the standards issued by the IASB (new IFRS Board) are ‘global standards’, which emphasises the request of the G30 and the Financial Stability Board (FSB) for a ‘single set of globally accepted accounting standards’. We strongly support the convergence of accounting standards, as it facilitates comparability of financial statements and will help investors’ decision making.

We support the reference to high quality standards but believe that a specific reference in section 2 to the development of high quality principles based standards is appropriate. ISDA members have always stressed in previous comment letters the importance of ‘principle-based’ standards as a means to achieving high quality standards and to aid in convergence. Therefore, we would like to take this opportunity to highlight again that ‘principles-based models’ will allow the IASB (or the new IFRS Board) to write accounting standards capable of being applied to different legal and financial backgrounds and national identities. Therefore we recommend that the objectives of the IFRS Foundation incorporate specifically the notion that the Foundation will seek to develop principles based standards,

III) Reflecting the role of the Monitoring Board (section 3)

Q 4, The Trustees seek views on the proposal to amend section 3 of the Constitution as follows:

The governance of the ~~IASC~~ IFRS Foundation shall primarily rest with the Trustees and such other governing organs as may be appointed by the Trustees in accordance with the provisions of this Constitution. A Monitoring Board (described further in sections 18–23) shall provide a formal link between the Trustees and public authorities. The Trustees shall use their best endeavours to ensure that the requirements of this Constitution are observed; however, they are ~~empowered to~~ may make minor variations in the interest of feasibility of operation if such variations are agreed by 75 per cent of ~~all~~ the Trustees.

Do you support this clarifying amendment?

Yes, we believe that this amendment adds clarity to Section 3 of the Constitution. As we indicated in the previous consultation, ISDA views the establishment of the Monitoring Board as an enhancement to the IASC Foundation's (new IFRS Foundation) public oversight and accountability arrangements. We agree that the role of the Monitoring Board merits a specific reference within the Section 3 of the Constitution and are pleased to see that the role of the Monitoring Board has been enshrined in the Constitution.

IV) Recognising the participation of Trustees from Africa and South America (section 6)

Q 5, The Trustees seek views on the proposal to amend section 6 of the Constitution as follows to include one Trustee from each of Africa and South America:

All Trustees shall be required to show a firm commitment to the IFRS ~~IASC~~ Foundation and the IFRS Board ~~IASB~~ as a high quality global standard-setter, to be financially knowledgeable, and to have an ability to meet the time commitment. Each Trustee shall have an understanding of, and be sensitive to, the challenges associated with the adoption and application of high quality global ~~accounting~~ financial reporting standards developed for use in the world's capital markets and by other users. The mix of Trustees shall broadly reflect the world's capital markets and diversity of geographical and professional backgrounds. The Trustees shall be required to commit themselves formally to acting in the public interest in all matters. In order to ensure a broad international basis, there shall be:

- (a) six Trustees appointed from the Asia/Oceania region;
- (b) six Trustees appointed from Europe;
- (c) six Trustees appointed from North America; and
- (d) one Trustee appointed from Africa;
- (e) one Trustee appointed from South America; and
- ~~(f)(d) two four~~ Trustees appointed from any area, subject to maintaining ~~establishing~~ overall geographical balance.

Do you support the specific recognition of Africa and South America?

Yes, ISDA supports the recognition of Africa and South America. However, ISDA members pointed out in the previous consultation in December 2008 'Review of the Constitution: Identifying Issues for Part 2 of the Review', that the mix of Trustees should be periodically reviewed to ensure that there is an appropriate balance of representation and maintain the IASB's (new IFRS Board) credibility as the only international standard-setter with worldwide coverage.

As such we believe periodic revisions should be carried out to ensure that both the geographical distribution and the professional standing of members remain appropriate. For example, the mix of the Trustees could be re-examined at the same time as the Trustee's terms are due for renewal. This important issue should be enshrined within the Section 6 of the Constitution.

V) A provision for up to two vice-chairmen of the Trustees (section 10)

Q 6, The Trustees seek views on the proposal to amend section 10 of the Constitution as follows to allow up to two Trustees to be appointed as vice-chairmen of the Trustees.

The Chairman of the Trustees, and up to two Vice-Chairmen, shall be appointed by the Trustees from among their own number, subject to the approval of the Monitoring Board. With the agreement of the Trustees, regardless of prior service as a Trustee, the appointee may serve as the Chairman or a Vice-Chairman for a term of three years, renewable once, from the date of appointment as Chairman or Vice-Chairman.

Do you support the constitutional language providing for up to two Vice-Chairmen?

Yes, ISDA members support this amendment given the demands placed on the Chairman of the Trustees in carrying out its functions.

VI) Continued emphasis on effective Trustee oversight (sections 13 and 15)

Q 7, The Trustees seek views on the proposal to make no specific amendments to sections 13 and 15, but to address the valid and important concerns raised by commentators by way of enhanced accountability, consultation, reporting and ongoing internal due process improvements.

As stated in our response to the previous consultation 'Review of the Constitution: Identifying Issues for Part 2 of the Review', ISDA believes the existing wording of the responsibilities of the Trustees as drafted in sections 13 and 15 is appropriate.

We would like to point out that the volume and intensity of activity on the IASB and its constituents is high –the current IASB agenda contains several proposals covering significant topics such as Impairment, Hedging, Financial Statements Presentation, Financial Instruments with Characteristics of Equity, Emission Trading Schemes, Insurance Contracts, etc. While the economic crisis has undoubtedly been a driving factor in the activity of the IASB, ISDA is concerned about whether the IASB and its constituents can adequately consider, within the timeframes allotted by the IASB, the new standards and assess whether they improve financial reporting and provide decision-useful information. The current workload placed on the IASB and its constituents has highlighted the importance of effective Trustee oversight.

We retain the belief as expressed in our comment letter to Part 1 that consultation and due process remains as one of the most suitable means to enhance accountability. In our letter dated 25 June 2005, we outlined various measures to enhance accountability, consultation, reporting and ongoing internal due process improvements, which included efficient use of ties with industry bodies so as to improve the consultation process, greater use of extensive field testing, public hearings and roundtables. We are pleased to see that many of these measures have been taken since the date of the aforementioned letter.

VII) Expanding the IASB's liaison with other organizations (section 28)

Q 8, Section 28 would be amended as follows:

The ~~IASB~~ IFRS Board will, in consultation with the Trustees, be expected to establish and maintain liaison with national standard-setters and other official bodies ~~concerned with an interest in~~ standard-setting in order to assist in the development of IFRSs and to promote the convergence of national accounting standards and International Accounting Standards and International Financial Reporting Standards IFRSs.

Do you support the changes aimed at encouraging liaison with a broad range of official organisations with an interest in accounting standard-setting?

Yes, we agree that expanding the liaison with other organisations should be included in Section 28 of the Constitution. As referenced in the previous question and as stated in our response to the other consultations, ISDA believes that liaison with other organisations is an effective way to promote transparency and could help the IASB (new IFRS Board) to allocate its resources to those projects that have a greater demand and also help to set its priorities. However we recommend that the IFRS Board take care in selecting the organizations with which they will liaise as such corroborative efforts can require significant time and resources.

VIII) The possibility of two Vice-Chairmen for the IFRS Board (section 30)

Q 9, The Trustees seek views on the proposal to amend section 30 of the Constitution as follows to permit the appointment of up to two Board members to act as vice chairmen of the IASB.

The Trustees shall appoint one of the full-time members as Chairman of the ~~IASB~~ IFRS Board, who shall also be the Chief Executive of the IASC IFRS Foundation. ~~One~~ Up to two of the full-time members of the ~~IASB~~ IFRS Board ~~shall~~ may also be designated by the Trustees as a Vice-Chairman, whose role shall be to chair meetings of the ~~IASB~~ IFRS Board in the absence of the Chairman or to represent the Chairman in external contacts in unusual circumstances (such as illness). The appointment of the Chairman and the designation as Vice-Chairman shall be for such term as the Trustees decide. The title of Vice-Chairman would not imply that the individual member (or members) concerned is (or are) the Chairman-elect.

ISDA members agree that the appointment of one or two Vice-Chairmen would assist the Chairman of the IASCF (new IFRS Foundation) and the IASB (new IFRS Board) in the performance of their responsibilities.

IX) The length of IFRS Board members' terms (section 31)

Q 10, The Trustees seek views on the proposal to amend section 31 to allow for altered terms of appointment for IASB members appointed after 2 July 2009.

The proposed amendment is to allow for Board members to be appointed initially for a term of five years, with the option for renewal for a further three-year term. This will not apply to the Chairman and Vice-Chairman, who may be appointed for a second five-year term. The Chairman or Vice-Chairman may not serve for longer than ten consecutive years.

The proposed amendments to section 31 are as follows:

Members of the ~~IASB~~ IFRS Board appointed before 2 July 2009 shall be appointed for a term of up to five years, renewable once for a further term of five years. Members of the IFRS Board appointed after 2 July 2009 shall be appointed initially for a term of up to five years. Terms are renewable once for a further term of three years, with the exception of the Chairman and a Vice-Chairman. The Chairman and a Vice-Chairman may serve a second term of five years, but may not exceed ten years in total length of service as a member of the IFRS Board.

Do you support the change in proposed term lengths?

As stated in our response to the previous consultation, ISDA members believe that periodic revisions should be carried out to ensure that both the geographical distribution and the professional standing of members remain appropriate.

X) Accelerated due process (section 37c)

Q 11, The Trustees seek views on the proposal to insert in section 37 (to become section 38) of the Constitution an additional subsection as follows to allow the Trustees, in exceptional circumstances, to authorise a shorter due process period. Authority would be given only after the IASB had made a formal request. The due process periods could be reduced but never dispensed with completely.

The ~~IASB~~ IFRS Board shall:

(a) ...

(b) ...

(c) in exceptional circumstances, and only after formally requesting and receiving prior approval from the Trustees, reduce, but not eliminate, the period of public comment on an exposure draft below that described as the minimum in the Due Process Handbook.

Yes, we agree with the wording of this amendment in this Section of the Constitution. As we stated in our previous letter dated 13 March 2009, ISDA believes that there may arise a need for a fast track procedure, although such instances should be exceptional. In general the internal review period by the IASB needs to reflect the length and complexity of the proposed change. Overall we do not believe that an appropriate due process can be completed with a consultation period of less than 30 days and as such recommend that the minimum be defined as 30 days.

XI) Encouraging greater input into the IASB's agenda-setting process (section 37(d))

Q 12, The Trustees seek views on the proposal to amend section 37(d) (to become section 38) of the Constitution as follows to expressly provide that the IASB must consult the Trustees and the SAC when developing its technical agenda.

The ~~IASB~~ IFRS Board shall:

~~(e)~~ (d) have full discretion in developing and pursuing the technical agenda of the ~~IASB~~ IFRS Board, after consulting the Trustees (consistently with section 15(c)) and the SAC (consistently with section 44(a)), and over project assignments on technical matters: in organising the conduct of its work, the ~~IASB~~ IFRS Board may outsource detailed research or other work to national standard-setters or other organisations;

ISDA members believe that consultation and due process strengthens the independence of the IASB (new (IFRS Board) rather than weaken it and consultation about the agenda-setting is fundamental. Therefore, we believe that the priorities of the IASB (new IFRS Board) should be consulted with the Monitoring Board.

XII) Review of the Standards Advisory Council (SAC) (sections 44 and 45)

Q 13, Trustees seek views on the proposal to make no amendment to sections 44 and 45 (renumbered as 45 and 46), which are the provisions relating to the SAC, at this time.

The ED affirms that many commentators have repeatedly raised the capacity and effectiveness of the SAC to accomplish its objectives given the large number of organizations in SAC (over 40) and therefore we would encourage the Trustees to review the groups which comprise the SAC. To improve the effectiveness of the SAC perhaps the Trustees could consider splitting the SAC into smaller groups and soliciting their advice on that basis.

XIII) Further clarifying amendments and improvements (sections 48 and 49 and elsewhere)

Q 14, The Trustees seek views on the proposal to amend section 48 by removing specific staff titles and replacing it with the term 'the senior staff management team'. Accordingly section 49 should be deleted. The Trustees also seek comment on the proposal to update the Constitution by removing all historical references that relate to when the organisation was established in 2001.

We do not have any objections to the proposed changes.